

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 02 TAIPEI 001817

SIPDIS

DEPARTMENT FOR INR/R/MR, EAP/RSP/TC, EAP/PA, EAP/PD -
ROBERT PALLADINO
DEPARTMENT PASS AIT/WASHINGTON

E.O. 12958: N/A

TAGS: [OPRC](#) [KMDR](#) [KPAO](#) [TW](#)

SUBJECT: TAIWAN NEWSPAPER COMMENTS ON UPCOMING
CONSTITUTIONAL REVISION

1) An April 17 editorial in the pro-unification United Daily News commented on the drawbacks of the proposed constitutional changes to be reviewed by an ad hoc National Assembly to convene in May. The following is a full-text translation of the editorial:

2) "Several Ignored Major Shortcomings of this Constitutional Revision"

Despite very serious doubts about the constitutionality and fairness of its institutional design, the "first and last-ever" election for an ad hoc National Assembly will nonetheless be held. And thus far, only medium and small political parties and civic groups have expressed opposition to the proposed constitutional amendments, which means the amendments are very likely to be adopted as originally proposed.

However, in addition to the more controversial proposals such as cutting Legislative Yuan (LY) seats in half, adopting the Japanese single-member district and two-vote system, and incorporating the referendum system on constitutional amendments, there are, indeed, many [constitutional] provisions that will be accordingly affected and revised [by the proposed changes]. When examined in detail, one can find many violations of constitutional principles. Unfortunately, these have not attracted much public attention. This is the result of hasty passage of the proposed amendments by the LY without comprehensive public education and discussion. Further consideration is really necessary.

First, due to the intention to abolish the ad hoc National Assembly, Amendment II of the last Constitutional change, which stipulates that an impeachment of the President is to be proposed by the LY and ratified, or rejected, by the ad hoc National Assembly, will be revised so that the Grand Justices of the Judicial Yuan would review and decide on a presidential impeachment. That is, an impeachment will become a lawsuit.

However, the Grand Justices are nominated by the President and nominations are not limited to those with qualifications of a judge. It is natural for the Justices to be affected by political influence. That their positions will be fair and just cannot be trusted. What's more, those Grand Justices who are not former judges lack the practical experience of judicial trial. This is another major drawback for them to review impeachments. A good example is the recent problem of judicial review caused by the No. 582 Constitutional Interpretation that had to be resolved by another interpretation, No. 592. And what should the procedures be after impeachment cases become judicial lawsuits? As the plaintiff, what is the LY's position in the procedures? And what are the rights and obligations of the President as the "defendant"? It is not appropriate for the LY to institute laws to [answer these questions], as it is also a party of the lawsuit itself. When an impeachment can only be proposed by the high threshold of a two-thirds majority in the LY, a lack of proper safeguard measures in the institutional design cannot be described as reasonable.

Second, legislative terms will be lengthened to four years, while the seats are halved, so that legislative elections can be held at the same time with the presidential election. Right now the balance of power between the President, the Premier, and the LY are not clear. There are frequent clashes between the President and an LY controlled by different political parties. Now, we have to face not only the risk every four years of different parties holding the LY majority and the Presidency, but also [the problem that] the two will both represent the latest public opinions. This may increase difficulty for political mediation. An institutional design with such high risk is indeed not appropriate.

In addition, after the ad hoc National Assembly is abolished, constitutional amendments and national boundary changes will all be decided by referendum. The proposed revision this time sets the conditions [for referendums] as: proposals for boundary changes need be endorsed by one-fourth of legislators, reviewed by an LY session attended by three-fourths of the legislators, and approved by a three-fourths majority of the attendees; and the valid votes cast by the voters [during the referendum] should be more than half of the total eligible voters. For amending the Constitution, the conditions for an LY proposal and a referendum are exactly the same. Obviously, these kinds of rules are not appropriate. Because the importance and political impact of any proposed change of national boundaries, the national flag and the national designation will be much stronger than the general constitutional amendments, taking into account current domestic and international situations. Even if the numbers of seats needed for the LY to propose such changes are the same, there should be different thresholds set for referendum votes [between the general amendments and those to change national boundaries].

Further examination shows that the thresholds set for the impeachment, recall, and even election of the President must be readjusted simultaneously. The current presidential election system only requires a relative majority for a candidate to be elected. But when the LY passes a recall of the President, more than half of all the eligible voters must vote and more than half of the valid votes cast must say yes before the move can be ratified. This means the recall move needs to successfully go through two checkpoints and a more strict absolute majority system is applied. This rule is obviously not balanced. Furthermore, when legislators want to recall the President, [endorsement by] one-fourth of the seats for the proposal and a two-thirds majority for its adoption will be needed. Meanwhile, a move to impeach the President needs one-half of the legislators to endorse and two-thirds of them to say yes. These are very strange provisions. For an impeachment is to determine the legal accountability while a recall is to determine the political accountability [of the President]. The conditions for legal accountability are stricter than those for political accountability. Does this mean that political confrontations are encouraged and legal violations are treated lightly? In short, any numbers set as thresholds in the Constitution should be institutionally logical. A certain line of reasoning should be followed.

The Constitution is the cornerstone of any constitutionally democratic country. But the upcoming constitutional revision has failed to attract public attention. The proposed changes are very likely to be hastily adopted under control of the political parties. What will happen to the existing Constitution, which has effectively lost its function as a regulator of national powers, after being distorted again by this [upcoming] revision, is yet to be known. But one thing can be sure. This will definitely not be a constitutional reform achievement.

PAAL